

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re WELLS FARGO RESIDENTIAL
MORTGAGE LENDING DISCRIMINATION
LITIGATION

M: 08-CV-1930 MMC

**ORDER RE: DEFENDANT'S
OBJECTIONS TO MAGISTRATE
JUDGE'S JUNE 4, 2009 ORDER;
DIRECTIONS TO PLAINTIFFS**

This Document Relates To:

ALL ACTIONS

Before the Court are defendant Wells Fargo Bank, N.A.'s ("Wells Fargo") Objections, filed June 15, 2009, to Magistrate Judge James Larson's June 4, 2009 Order, to the extent certain findings are made therein with respect to the bank examination privilege.¹ At the Court's direction, plaintiffs filed a response to the Objections, and Wells Fargo filed a reply thereto. Having read and considered the parties' respective filings, the Court rules as follows.

As the parties acknowledge, if the subject documents are covered by the bank examination privilege, the Office of the Comptroller of the Currency ("OCC") holds the privilege. See In re Bankers Trust Co., 61 F.3d 465, 468, 471-72 (6th Cir. 1995). Plaintiffs do not contend they have provided notice of their request for production of the documents


¹To the extent the Objections pertain to other findings made in the June 4, 2009 order, the Court, by order filed July 10, 2009, has denied the Objections as moot.

1 to the OCC, and, to the extent plaintiffs argue the Court can or should determine whether
2 the subject documents are privileged without providing to the OCC notice and an
3 opportunity to be heard, the Court disagrees. See, e.g., id. at 471-72 (holding where bank
4 examination privilege may be “appropriate,” federal agency “must be allowed the
5 opportunity to assert the privilege and the opportunity to defend its assertion”; noting that
6 because privilege is “qualified,” district court “must balance the competing interests of the
7 party seeking the documents and those of the government”).

8 Accordingly, to the extent plaintiffs seek production of documents to which Wells
9 Fargo has asserted the bank examination privilege may apply, plaintiffs are hereby
10 DIRECTED to give notice of their request to the OCC.² Unless and until such notice has
11 been given, and either the OCC subsequently does not claim a privilege or any claim of
12 privilege by the OCC is found to be without merit by Magistrate Judge Larson, Wells Fargo
13 shall not be required to produce the subject documents to plaintiffs.

14 **IT IS SO ORDERED.**

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16 Dated: August 17, 2009

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18 MAXINE M. CHESNEY
19 United States District Judge
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26 ²The Court notes that Wells Fargo, in response to plaintiffs’ requests for production
27 of documents, has claimed the subject documents are, in addition, covered by privileges
28 held by Wells Fargo itself, such as the attorney-client privilege. As set forth in the June 4,
2009 Order, the issue of whether the subject documents are covered by any privilege other
than the bank examination privilege remains pending before Magistrate Judge Larson.